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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,070	07/31/2003	Robert J. Maki	58095US002	2056
32692	7590	02/25/2005	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY			THOMAS, ALEXANDER S	
PO BOX 33427			ART UNIT	PAPER NUMBER
ST. PAUL, MN 55133-3427			1772	

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/632,070	MAKI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Alexander Thomas	1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
  - 4a) Of the above claim(s) 19-41 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 and 14-18 is/are rejected.
- 7) Claim(s) 13 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/31, 10/22, 12/27</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: ____.                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-18, drawn to a product, classified in class 428, subclass 43.
  - II. Claims 19-41, drawn to a process, classified in class 156.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by a materially different process such as by forming the tear pattern in the product after laminating the layers of the product.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Ms. Lambert on February 9, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-41 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Art Unit: 1772

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4, 7-12 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 95/06449. See page 5, line 1 through page 6, line 4 and page 11, lines 13-14. The reference discloses elastic wraps comprising two outer non-woven layers with intermediate elastic strands that extend in the longitudinal direction of the wrap (see US 4,984,584) which have been perforated to enhance subsequent separation.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 95/06449. The reference discloses elastic wraps comprising two outer non-woven layers with intermediate elastic strands that extend in the longitudinal direction of the wrap (see US 4,984,584) which have been perforated to enhance subsequent separation; see page 5, line 1 through page 6, line 4 and page 11, lines 13-14. However, the reference does not disclose embossing the wrap in order to provide enhanced tear lines. There is disclosure in the reference of embossing nonwoven tape to enhance tearability of the tape; see page 3, lines 8-18. It would have been obvious to one of ordinary skill in the art to emboss an elastic tape comprising two outer nonwoven layers and an intermediate layer of elastic strands in a pattern to enhance the tear properties of the tape.

10. Claims 1-6, 8-12, 14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al ('584) in view of Swanson et al ('958). The primary reference discloses the invention substantially as claimed, namely two outer non-woven layers with intermediate elastic strands that extend in the longitudinal direction of the bandage; see column 1, lines 43-49, column 3, lines 32-39 and Figure 1. However, the primary reference does not disclose providing tear lines in the bandage. The secondary reference discloses providing tear lines in nonwoven bandages by embossing patterns in the bandages; see the Abstract and column 1, lines 13-20. It would have been obvious to one of ordinary skill in the art to provide tear lines in the article of the primary reference by embossing patterns therein, as taught by the secondary reference, in order to enhance tearing properties of the bandage. It would also have been obvious to one

of ordinary skill in the art to emboss only one or both outer nonwoven layers in the article of the primary reference depending on the desired tearing properties of the bandage for a particular end use (claim 5).

***Double Patenting***

11. Claims 1-12 and 14-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of copending Application No. 10/962,798 in view of Swanson et al ('958) and WO 95/06449. The primary reference discloses the invention substantially as claimed, namely two outer non-woven layers with intermediate elastic strands that extend in the longitudinal direction of the bandage. However, it does not disclose embossing or perforating the laminate. The secondary references disclose embossing and perforating nonwoven laminates in order to improve tear properties. It would have been obvious to one of ordinary skill in the art to emboss or perforate the article of the primary reference in view of the teachings of the secondary references in order to provide tear properties to the laminate.

This is a provisional obviousness-type double patenting rejection.

***Allowable Subject Matter***

12. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Thomas whose telephone number is 571-272-1502. The examiner can normally be reached on 6:30-4:00 M-THUR.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ast

*Alexander S. Thomas*

ALEXANDER S. THOMAS  
PRIMARY EXAMINER